

STATEMENT OF PURPOSE AND NEED

This proposed legislation would extend indefinitely the Export Control Act of 1949, as amended (50 U.S.C. App. §§ 2021-2032), which is now scheduled to expire by its terms on June 30, 1965. The proposal would also amend Section 5 of that Act to amplify existing non-criminal remedies for violations of the Export Control Act.

The Export Control Act authorizes the President to regulate exports from the United States to the extent necessary to safeguard our national security and domestic economy and to further our foreign policy. The Department of Commerce administers the Act by delegation of authority from the President. Under current administrative policies and procedures, specific export licenses, issued on the basis of applications submitted by exporters, are required for exports of certain strategic commodities and technical data to destinations other than Canada, in order to prevent the Sino-Soviet bloc from obtaining them by direct or indirect means from United States sources. Practically all exports are prohibited to Cuba, Communist China, North Korea, and North Viet-Nam in accordance with our security and foreign policy interests.

Exports to friendly nations are encouraged and are kept free of restrictive export controls except to the extent necessary to prevent diversion to unauthorized destinations or an excessive drain of materials in domestic scarce supply or other significant frustrations of U.S. export control objectives.

While today there appear to be some hopeful signs of a possible future easing of world political tensions, it would be very harmful to our security and foreign policy interests to allow the authority to restrict strategic exports to lapse, as it will if the Export Control Act is permitted to expire next June 30. Realistically, a need for control over exports of strategic commodities will probably continue for some time in the future. The United States should not be left without authority to exercise such control. The Act provides the flexibility necessary to permit changes to be made in the scope and direction of export controls, as and when conditions change. Since the Act has been in force in one form or another for nearly 25 years, and there appears little likelihood that it will soon become unnecessary, we recommend an indefinite extension.

The proposed legislation would accomplish this result by repealing Section 12 of the Act. That section now provides that the authority granted under the Act will terminate on June 30, 1965, or upon any prior date which the Congress by concurrent resolution or the President may designate.

The proposed amendments to Section 5 of the Act would expand existing administrative techniques for enforcement of the Act by authorizing imposition of a civil penalty up to \$500, either in addition to, or in lieu of, any other sanction already authorized under the Act and would also authorize compromise and settlement of administrative proceedings under the Act on monetary terms (up to \$500 for each violation) as well as non-monetary terms. Accompanying language would insure that the new fining and compromise authority are not intended to limit existing non-criminal procedures and remedies for export control violations.

The Export Control Act now provides criminal penalties for violations of the Act or of any regulation, order, or license issued thereunder. Additionally, by regulation, the Department of Commerce may curtail or deny the violator's privilege of participating in future exports of U.S. commodities or technical data, as a result of administrative compliance proceedings involving a complaint and hearing procedure within the Department of Commerce. The authority to impose monetary penalties would provide a needed flexibility in the sanctions available, by permitting appropriate deterrent action to be taken in cases of export control violations which involve no serious security or foreign policy consequences. Typical of such cases are negligent violations of export clearance requirements by freight forwarders, and false declaration of exports of non-strategic goods to friendly foreign countries in order to evade the latter's import duties and controls. Violations of this sort take substantial investigative time and effort away from the more important work of enforcing truly strategic export controls. Yet, to take no action with respect to these lesser violations, especially when they occur repeatedly, tends to encourage similar violations by others and to invite evasion of our strategic controls as well. The only present alternative to criminal punishment or denial of export privileges in most of these relatively minor cases is to send letters warning the violator that repetitions will be punished. On the one hand these "warning letters" have little deterrent effect on persons other than the violators, and on the other hand the threatened criminal and administrative sanctions now available often seem too extreme. This is true even in the case of repeated minor violations, where the firm is one doing a large volume business.

The Customs Bureau's power to seize and forfeit illegal exports under another law (see 22 U.S.C. 401) is of practical deterrent value only where the goods have not already left the country and only if the actual violator, rather than an innocent party who happens to own the goods at the time of seizure, will bear the monetary loss resulting from forfeiture. This combination of circumstances occurs in only a small minority of cases, because of the mechanics and legal terms of international trade.

Under the proposed amendment, fines of up to \$500 for each proven violation—and there are often several violations involved in a single export—could be imposed, or alternatively, such sums could be accepted in compromise of, and as a substitute for, an administrative order denying the violator future export privileges. These monetary penalties would serve as an effective deterrent to violations involving corner-cutting, petty illegality, and repeated inexcusable negligence, as opposed to more serious schemes to evade our strategic controls. However, the imposition of such a penalty would not foreclose criminal or other non-criminal sanctions as well. The proposed compromise power would authorize the Department of Commerce to settle administrative compliance proceedings on payment by the respondent of a sum up to \$500 in lieu of other administrative remedies such as an order denying future export privileges to the respondent. The amendments would expressly leave unaffected the Customs Bureau's present power to compromise, remit and mitigate forfeitures under 22 U.S.C. 401, as well as existing administrative "denial order" procedures of the Department of Commerce. The language of the proposed amendments has been adapted from acts of Congress which grant similar powers to departments and agencies administering other Federal regulatory laws.

We urge consideration of the enclosed draft bill by the Congress as early in this session as possible, in view of the Act's scheduled expiration on June 30, 1965. Prompt passage of the legislation is needed for budgetary, planning and personnel reasons, and to prevent any doubt in the United States or abroad concerning the continuance of this important facet of our economic defense program.

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<p>Remarks: The Bureau of the Budget has asked for the views of the Agency pertaining to amendments to the Export Control Act of 1949 per the attached material.</p> <p>The amendment, in essence, extends the provisions of the Act for an indefinite period and provides more flexibility in penalizing violators.</p> <p>As the interested officer in the Agency, we would appreciate your comments regarding this proposal by 26 January to assure that the Agency's response is made within the time limits set by BOB.</p> <p>Please return the attached material.</p>			
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Legislative Counsel 7D01 [redacted]			19 Jan.
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